

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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BANK OF AMERICA, NATIONAL TRUST  
AND SAVINGS ASSOCIATION, a national  
banking association,

Appellant,

vs.

CLIFFORD C. ANGLIM, United States Collector  
of Internal Revenue for the First Collection  
District for California,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

FILED

APR 10 1943



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, California.

In the District Court of the United States in and  
for the Northern District of California, South-  
ern Division

No. 22219S

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION, a national  
banking association,

Plaintiff,

vs.

CLIFFORD C. ANGLIM, United States Collector  
of Internal Revenue for the First Collection  
District of California,

Defendant.

### COMPLAINT FOR THE RECOVERY OF INCOME TAXES

Comes Now the plaintiff, complains of the de-  
fendant, and for cause of action alleges:

#### I.

This action arises under the Internal Revenue  
Laws [1\*] of the United States; it is brought pursu-  
ant to the provisions of Section 24 of the Judicial  
Code, U.S.C. Title 28, Sec. 41(5), for the recovery of  
income tax erroneously and illegally collected from  
the plaintiff as withholding agent under Section  
143 of the Internal Revenue Code, as hereinafter  
more fully appears.

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\* Page numbering appearing at foot of page of original certified  
Transcript of Record.



## II.

The plaintiff is a national banking association organized and existing under and by virtue of the laws of the United States of America. Its principal place of business is in the City and County of San Francisco, State of California, and in the Northern District of California, Southern Division.

## III.

The defendant is now, and at all times since the 7th day of March 1938 has been, the duly appointed, qualified and acting United States Collector of Internal Revenue for the First Internal Revenue Collection District of the State of California, and is a resident of the said Northern District of California.

## IV.

At all times herein mentioned plaintiff was the transfer agent of Transamerica Corporation and as such transfer agent had the control, custody, disposal or payment of dividends declared by said Transamerica Corporation, to the stockholders of said corporation.

## V.

On or about March 15, 1939, the plaintiff filed a withholding tax return on Treasury Department Form 1042 [2] reporting thereon certain income including dividends paid by Transamerica Corporation on the capital stock of said corporation, payable to alien individuals who were not residents of the United States. Plaintiff also reported on this Form the amount of tax which it was withholding

from said non-resident alien individuals, and the aggregate amount of said tax was paid by the plaintiff on or about June 15, 1939 to the defendant as Collector of Internal Revenue for the First District of California.

## VI.

The amount of the said tax deducted and withheld from the said non-resident alien individuals, and reported on said return form 1042, and paid to the defendant, all as alleged in the preceding paragraph hereof, included \$3,189.83 of tax computed upon and withheld from the dividends declared by Transamerica Corporation in 1938 and payable in said year 1938, to said non-resident alien individuals who were stockholders of said company. The amount of said dividends were deposited by Transamerica Corporation with the plaintiff as its transfer agent charged with the duty of making disbursement of said dividends to the stockholders entitled thereto, and the plaintiff assumed that the tax of \$3,189.83 which it withheld, reported, and paid to the defendant as aforesaid, was a tax required to be so deducted withheld and paid by the provisions of said Section 143(b) and (c) of the Internal Revenue Code.

## VII.

After the payment of the withheld tax of \$3,189.83 [3] as hereinbefore alleged and on or about January 31, 1941, the Commissioner of Internal Revenue determined and ruled that the dividends paid by Transamerica Corporation in the year 1938 did

not constitute dividend income to its stockholders. Thereupon plaintiff made a notation of credit to the account of the stockholders from whom the said tax of \$3,189.83 was withheld indicating a credit to which each of said persons is entitled by reason of the erroneous deduction of said tax.

### VIII.

Section 143(b) of the Internal Revenue Code requires the withholding of tax only upon items which constitute income. Since the said Transamerica Corporation dividends did not constitute income, no withholding of tax thereon was required, and the defendant acted unlawfully in collecting from plaintiff the amount of said tax of \$3,189.83 shown in plaintiff's said return form 1042, as having withheld upon said dividends.

### IX.

On or about July 26, 1941 the plaintiff duly filed its claim for refund of said tax of \$3,189.83. Said claim was made and filed in accordance with the provisions of the law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, and alleged as the bases for said claim the same grounds and facts hereinbefore alleged and herein relied upon. Copy of said claim (exclusive of the voluminous schedules which were attached thereto) is attached hereto as Exhibit A and hereby made a part hereof. On November 25, 1941 the Deputy Commissioner of Internal Revenue advised the plaintiff by letter that its claim for

refund would be rejected. Copy of said letter of November 25, 1941 is attached hereto as Exhibit B and hereby made a part hereof. On December 17, 1941 the Commissioner of Internal Revenue notified the plaintiff that the said claim for refund was rejected in full. Copy of said notice of rejection is attached hereto as Exhibit C and hereby made a part hereof.

### X.

No part of said sum of \$3,189.83 erroneously [4] and illegally collected from the plaintiff by defendant as aforesaid has been repaid or refunded, and said sum of \$3,189.85 together with interest thereon as provided by law is due, unpaid, and owing to the plaintiff from the defendant.

## SECOND CAUSE OF ACTION

For another, further, and second cause of action herein, plaintiff alleges:

### I.

Plaintiff realleges all of paragraphs I, II, III and IV of the First Cause of Action herein and makes the same a part of this Second Cause of Action, the same as if fully set forth herein.

### II.

On or about March 15, 1940, the plaintiff filed a withholding tax return on Treasury Department Form 1042 reporting thereon certain income including dividends paid by Transamerica Corporation on the capital stock of said corporation, payable to

alien individuals who were not residents of the United States. Plaintiff also reported on this Form the amount of tax which it was withholding from said non-resident alien individuals, and the aggregate amount of said tax was paid by the plaintiff on or about June 15, 1940 to the defendant as Collector of Internal Revenue for the First District of California.

### III.

The amount of the said tax deducted and withheld from the said non-resident alien individuals, and reported on said return form 1042, and paid to the defen- [5] dant, all as alleged in the preceding paragraph hereof, included \$3,227.46 of tax computed upon and withheld from the dividends declared by Transamerica Corporation in 1939 and payable in said year 1939, to said non-resident alien individuals who were stockholders of said company. The amount of said dividends were deposited by Transamerica Corporation with the plaintiff as its transfer agent charged with the duty of making disbursement of said dividends to the stockholders entitled thereto, and the plaintiff assumed that the tax of \$3,227.46 which it withheld, reported, and paid to the defendant as aforesaid, was a tax required to be so deducted, withheld, and paid by the provisions of said Section 143(b) and (c) of the Internal Revenue Code.

### IV.

After the payment of the withheld tax of \$3,277.46 as hereinbefore alleged and on or about Jan-



uary 31, 1941, the Commissioner of Internal Revenue determined and ruled that the dividends paid by Transamerica Corporation in the year 1939 did not constitute dividend income to its stockholders. Thereupon plaintiff made a notation of credit to the account of the stockholders from whom the said tax of \$3,227.46 was withheld indicating a credit to which each of said persons is entitled by reason of the erroneous deduction of said tax.

#### V.

Section 143(b) of the Internal Revenue Code requires the withholding of tax only upon items which constitute income. Since the said Transamerica Corporation dividends did not constitute income, no withholding of tax thereon was required, and the defendant acted un- [6] lawfully in collecting from plaintiff the amount of said tax of \$3,227.46 shown in plaintiff's said return form 1042, as having been withheld upon said dividends.

#### VI.

On or about July 26, 1941 the plaintiff duly filed its claim for refund of said tax of \$3,227.46. Said claim was made and filed in accordance with the provisions of the law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, and alleged as the bases for said claim the same grounds and facts hereinbefore alleged and herein relied upon. Copy of said claim (exclusive of the voluminous schedules which were attached thereto) is attached hereto as Exhibit D

and hereby made a part hereof. On November 25, 1941 the Deputy Commissioner of Internal Revenue advised the plaintiff by letter that its claim for refund would be rejected. Copy of said letter of November 25, 1941 is attached hereto as Exhibit B and hereby made a part hereof. On December 17, 1941 the Commissioner of Internal Revenue notified the plaintiff that the said claim for refund was rejected in full. Copy of said notice of rejection is attached hereto as Exhibit C and hereby made a part hereof.

### THIRD CAUSE OF ACTION

For another, further, and third cause of action herein, plaintiff alleges:

#### I.

Plaintiff realleges all of paragraphs I, II and III of the First Cause of Action herein and paragraph II of the Second cause of Action herein, and makes the same a part of this Third Cause of Action the same as though fully set forth herein.

#### II.

During the year 1939 plaintiff was custodian for the account of one Hugo Menkes of 125 Chaussee D'Anners, Brussels, Belgium. In the year 1939

plaintiff received for credit to said account, amounts as follows: [7]

Interest on savings bank account.....	\$302.26
Interest on \$3,000 Treasury bonds, 2 7/8, '55/60 .....	114.99
	<hr/>
Total .....	\$417.25
Other interest .....	207.13
	<hr/>
Total .....	\$624.38
	<hr/> <hr/>

Hugo Menkes is a non-resident alien within the meaning of Section 143 of the Internal Revenue Code.

### III.

The amount of the said tax deducted and withheld from the said non-resident alien individuals and reported on said return form 1042 and paid to the defendant, all as alleged in paragraph II of the Second Cause of Action herein, included \$62.44 computed upon and withheld from the income credited to the account of Hugo Menkes as alleged in the preceding paragraph hereof.

The said \$62.44 tax withheld as aforesaid included \$41.73 of tax withheld on interest on the savings account and on interest on the Treasury bond, which interest was credited to the account of Hugo Menkes as alleged in the preceding paragraph hereof. The said interest on the savings account and the said interest on the treasury bonds does not constitute income upon which tax is required to be withheld under the provisions of Section 143 of the Internal Revenue Code, and the plaintiff errone-



ously paid the tax withheld on these items to the defendant and the defendant erroneously and illegally collected the same from the plaintiff.

Upon discovery of the error in withholding this said amount of \$41.73, the plaintiff credited back to the account of Hugo Menkes, the said amount of \$41.73.

#### IV.

On April 14, 1941, the plaintiff duly filed with [8] the defendant its claim for refund of said tax of \$41.73. Said claim was made and filed in accordance with the provisions of the law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof and alleged as the bases for said claim the same grounds and facts hereinbefore alleged and herein relied upon. A copy of said claim for refund is hereto attached marked Exhibit E. On November 25, 1941, the Deputy Commissioner of Internal Revenue advised the plaintiff by letter that its claim for refund would be rejected. Copy of said letter of November 25, 1941, is attached hereto as Exhibit B and hereby made a part hereof. On December 17, 1941, the Commissioner of Internal Revenue notified the plaintiff that the said claim for refund was rejected in full. Copy of said notice of rejection is attached hereto as Exhibit C and hereby made a part hereof.

#### V.

No part of said sum of \$41.73 erroneously overpaid by plaintiff and erroneously and illegally collected from the plaintiff by the defendant as afore-

said, has been repaid or refunded and said sum of \$41.73 together with interest thereon as provided by law, is due, unpaid, and owing from the defendant.

Wherefore, the plaintiff prays that it have and recover of and from the defendant the sum of \$6,-459.02 together with interest thereon as provided by law, and costs of suit herein, and for such other and further relief as the Court may deem just and proper in the premises.

GEORGE H. KOSTER

Attorney for Plaintiff

300 Montgomery Street

San Francisco, California

(Duly Verified.) [9]

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## EXHIBIT A

### CLAIM

To Be Filed With the Collector Where Assessment  
Was Made or Tax Paid

Collector's Stamp

(Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

[x] Refund of Tax Illegally Collected.

[ ] Refund of Amount Paid for Stamps Unused,  
or Used in Error or Excess.

[ ] Abatement of Tax Assessed (not applicable  
to estate or income taxes).

State of California

County of San Francisco—ss:

(Type or Print)

Name of taxpayer or purchaser of stamps—Bank of America N. T. & S. A. "Withholding Agent".

Business address—1 Powell Street, San Francisco, California.

Residence—

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed—1st of California at San Francisco.
2. Period (if for income tax, make separate form for each taxable year) from January 1, 1938, to December 31, 1938.
3. Character of assessment or tax—Income tax.
4. Amount of assessment, \$10,061.56; dates of payment June 13, 1939.
5. Date stamps were purchased from the government—
6. Amount to be refunded—\$3,189.83.
7. Amount to be abated (not applicable to income or estate taxes)—
8. The time within which this claim may be legally filed expires, under Section 322 of the Revenue Act of 1938, as amended, on March 15, 1942.

The deponent verily believes that this claim should be allowed for the following reasons:

Return of tax withheld for taxable year 1938 (Form 1042), filed on or about March 15, 1939, included tax on dividends paid by Transamerica Corporation in January and July, 1938, per list attached, amounting to \$3,189.83. Said dividends have since been ruled by Treasury Department to be a return of capital and not taxable. In accordance with said ruling the tax erroneously withheld has been credited back to the accounts of the stockholders and demand for refund is hereby respectfully requested.

(Attach letter-size sheets if space is not sufficient)

Signed R. G. SMITH

Exec. Vice President

Sworn to and subscribed before me this 24th day of July, 1941.

VIRGINIA A. BEEDE,

Notary Public

[Printers Note]: Reverse side ruled form not filled out.] [11]

EXHIBIT B

Treasury Department  
Washington

Nov. 25, 1941

Office of  
Commissioner of Internal Revenue  
Address reply to  
Commissioner of Internal Revenue  
and refer to

IT:Rec:IW :2

EB-2639729

2639728

2635471

Bank of America, National Trust and Savings  
Association,  
1 Powell Street  
San Francisco, California.

Sirs:

Reference is made to the claim filed by you for the refunding of \$3,189.83, a portion of the tax assessed against you on your 1938 withholding return, Form 1042, serial number 500170, which return includes dividends on your stock and on stock of the Transamerica Corporation. Further reference is made to the claims filed by you for the refunding of \$3,227.46 and \$41.73, portions of the tax assessed against you on your return Form 1042, serial number 500131, for the year 1939 which return also reports dividends on stock of your corporation and on stock of the Transamerica Corporation.

The basis of each of the claims for the refunding of \$3,189.83 and \$3,227.46 is that tax was erroneously withheld from dividends on stock of the Transamerica Corporation paid to numerous non-resident foreign persons as the Bureau has determined that the dividends are 100 percent nontaxable. The basis of the claim for the refunding of \$41.73 is that this amount of tax was withheld in error from interest on a savings bank account and Treasury bonds paid to Hugo Menkes, a nonresident alien individual, which income is exempt from taxation.

Section 143(f) of the Internal Revenue Code provides as follows:

“Where there has been an overpayment of tax under this section any refund or credit made under the provisions of section 322 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.”

As the tax involved was actually withheld by you from the income paid to the nonresident foreign persons any excess amounts withheld are refundable only to those recipients upon showing that the amounts withheld were in excess of any tax properly due for the taxable year. For this reason your claims will be rejected.

Each of the nonresident foreign persons is privileged to file a claim on Form 843 with the collector of internal revenue, Baltimore, Maryland, for the refunding of any excess tax withheld from his in-



come. [12] Each claim setting forth all facts in detail under oath should be accompanied by a true and accurate income tax return executed to report the person's taxable income received from all sources within the United States during the year involved unless a return was previously filed. In each instance where a return was previously filed reference to that return and to the district in which it was filed should be made in the claim.

Official notice of the disallowance of your claims will be issued by registered mail in accordance with section 3772, chapter 37, of the Internal Revenue Code.

Respectfully,

TIMOTHY C. MOONEY,

Deputy Commissioner.

By (signed) D. L. SIEGRIST

Head of Division [13]

EXHIBIT C  
Treasury Department  
Washington

Dec. 17, 1941

Office of  
Commissioner of Internal Revenue  
Address reply to  
Commissioner of Internal Revenue  
and refer to

IT:C1:CC:Rej.

Bank of America, National Trust and Savings  
Association,  
1 Powell Street,  
San Francisco, California

In re: Claims for refund of \$3,189.83,  
\$41.73 and \$3,227.48  
For the years 1938 and 1939

Sirs:

Reference is made to letter dated November 25, 1941 wherein you were informed that the claim or claims for refund indicated above would be disallowed. The letter also stated the reasons for the proposed disallowance.

In accordance with the provisions of section 3772 (a)(2) of the Internal Revenue Code, this notice of disallowance in full of your claim or claims is hereby given by registered mail.

Respectfully,

GUY T. HELVERING,  
Commissioner,

By (signed) T. MOONEY

Deputy Commissioner. [14]



EXHIBIT D

Claim

To Be Filed With the Collector Where Assessment  
Was Made or Tax Paid

Collector's Stamp  
(Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

☒ Refund of Tax Illegally Collected.

☐ Refund of Amount Paid for Stamps Unused,  
or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable  
to estate or income taxes).

State of California

County of San Francisco—ss.

(Type or Print)

Name of taxpayer or purchaser of stamps—Bank  
of America N. T. & S. A. "Withholding Agent".

Business address—1 Powell Street, San Francisco,  
California.

Residence—

The deponent, being duly sworn according to law,  
deposes and says that this statement is made on  
behalf of the taxpayer named, and that the facts  
given below are true and complete:

1. District in which return (if any) was filed—  
1st of California at San Francisco.
2. Period (if for income tax, make separate form  
for each taxable year) from January 1, 1939,  
to December 31, 1939.

3. Character of assessment or tax—Income tax.
4. Amount of assessment, \$10,830.09; dates of payment June 12, 1940.
5. Date stamps were purchased from the Government—
6. Amount to be refunded—\$3,227.46.
7. Amount to be abated (not applicable to income or estate taxes)—
8. The time within which this claim may be legally filed expires, under Section 322 of the Revenue Act of 1938, as amended, on March 15, 1943.

The deponent verily believes that this claim should be allowed for the following reasons:

Return of tax withheld for taxable year 1939 (Form 1042), filed on or about March 15, 1940 included tax on dividends paid by Transamerica Corporation in January and July 1939, per list attached, amounting to \$3,227.46. Said dividends have since been ruled by the Treasury Department to be a return of capital and not taxable. In accordance with said ruling the tax erroneously withheld has been credited back to the accounts of the stockholders and demand for refund is hereby respectfully requested.

(Attach letter-size sheets if space is not sufficient)

Signed R. G. SMITH

Exec. Vice President

Sworn to and subscribed before me this 24th day of July, 1941.

VIRGINIA A. BEEDE,

Notary Public.

(See Instructions on Reverse Side)

[Printer's Note: Reverse side ruled form not filled out.] [15]

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EXHIBIT E

Claim

To Be Filed With the Collector Where Assessment  
Was Made or Tax Paid

Collector's Stamp  
(Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

[x] Refund of Tax Illegally Collected.

[ ] Refund of Amount Paid for Stamps Unused,  
or Used in Error or Excess.

[ ] Abatement of Tax Assessed (not applicable  
to estate or income taxes).

State of California

County of San Francisco—ss.

(Type or Print)

Name of taxpayer or purchaser of stamps—Bank  
of America N. T. & S. A. "Withholding Agent".

Business address—1 Powell Street, San Francisco,  
California.

## Residence—

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed—  
first California.
2. Period (if for income tax, make separate form for each taxable year)—from January 1, 1939, to December 31, 1939.
3. Character of assessment or tax—Income tax.
4. Amount of assessment, \$10,830.09; dates of payment, June 12, 1940.
5. Date stamps were purchased from the Government—
6. Amount to be refunded—\$41.73.
7. Amount to be abated (not applicable to income or estate taxes)—
8. The time within which this claim may be legally filed expires, under Section 322 of the Revenue Act of 1936, as amended, on March 13, 1943.

The deponent verily believes that this claim should be allowed for the following reasons:

A 10% income tax was charged to the account of Hugo Menkes, of 125 Chaussee D'Anners, Brussels, Belgium, on the following items, viz:

Interest on Savings Bank Account.....	\$ 302.26
Interest on \$3,000 Treasury Bonds 27/8's	
1955-60 .....	114.99

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\$ 417.25

These items are exempt per Section 143(b) Internal Revenue Code and were erroneously included with other items of taxable interest on page 1 Form 1042 filed March 13, 1940 viz: "Interest \$624.38, tax withheld \$62.44." The tax erroneously withheld \$41.73 has been credited back to the account of Hugo Menkes by the withholding agent and it is respectfully requested that it be given a refund for this overpayment in accordance with Section 143(f) of Internal Revenue Code.

Treas. Bonds exempt per I. T. 2592.

(Attach letter-size sheets if space is not sufficient)

Signed **BANK OF AMERICA**

**N. T. & S. A.**

Withholding Agent

By **ROBERT C. CARLSON**

Assistant Trust Officer

Sworn to and subscribed before me this 10th day of April, 1941.

**FRANCES CURNOW,**

Notary Public.

(See Instructions on Reverse Side)

[Printer's Note: Reverse side ruled form not filled out.]

[Endorsed]: Filed July 2, 1942. [16]

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[Title of District Court and Cause.]

**ANSWER**

Now comes the defendant above named and answers the complaint on file herein as follows:

## FIRST CAUSE OF ACTION:

## I.

Answering Paragraph I of the First Cause of Action, defendant denies that said tax was erroneously or illegally collected from the plaintiff. Admits the remaining allegations of said paragraph.

## II.

Admits the allegations of Paragraphs II, III, IV, V and VI of the complaint. [17]

## III.

Answering Paragraph VII, defendant denies the allegations that the plaintiff made a notation of credit to the account of the stockholders from whom said tax of \$3,189.83 was withheld, and denies that plaintiff made a notation of credit indicating a credit to which each of said persons is entitled by reason of said deduction of tax. Admits the remaining allegations of Paragraph VII of the First Cause of Action.

## IV.

Answering Paragraph VIII defendant denies the allegation that defendant acted unlawfully in collecting said amount of tax shown in said return. The remaining allegations of Paragraph VIII are neither admitted nor denied by the defendant, since said allegations are conclusions of law.

## V.

Answering the allegations of Paragraph IX defendant admits that on July 26, 1941, plaintiff filed



a claim for refund of said tax of \$3,189.83. Admits that the plaintiff alleged as the bases for said claim for refund the grounds and facts alleged in the complaint and relied upon in the complaint. Admits that a true copy of said claim (exclusive of voluminous schedules) is attached as Exhibit A to the complaint. Admits that on November 25, 1941, said claim for refund was rejected by letter from the Deputy Commissioner of Internal Revenue, copy of which letter is attached as Exhibit B to the complaint. Admits that on December 17, 1941, the Commissioner of Internal Revenue notified the plaintiff that said claim for refund was rejected in full, and that copy of said notice of rejection is attached as Exhibit C to the complaint. Saving as herein admitted, defendant denies the allegations of Paragraph IX of the First Cause of Action.

## VI.

Answering the allegations of Paragraph X, defendant admits that no part of the sum of \$3,189.83 has been repaid or refunded by the defendant or otherwise. Defendant denies that said refund is due and owing to the plaintiff. [18]

Further answering said Paragraph X, defendant alleges that Paragraph 143 (f) of the Internal Revenue Code provides as follows:

“Where there has been an overpayment of tax under this section any refund or credit made under the provisions of section 322 shall be made to the withholding agent unless the

amount of such tax was actually withheld by the withholding agent.”

Defendant is informed and believes, and on such information and belief alleges that the plaintiff actually withheld from said non-resident alien stockholders the amount of tax herein involved, and that said taxes are refundable only to those recipients of dividends upon a showing that the amounts withheld were in excess of any tax properly due from said recipients of dividends for the taxable year.

Defendant further alleges that each of the non-resident foreign persons from whom said tax was withheld, is the proper person to file claim for refund for the tax involved.

## SECOND CAUSE OF ACTION:

### I.

Defendant refers to Paragraphs I, II, III and IV of the First Cause of Action and to his answer to said paragraphs and makes said answer a part of his answer to the Second Cause of Action as if the same were fully set forth herein.

### II.

Defendant admits the allegations of Paragraphs II and III of the Second Cause of Action.

### III.

Answering Paragraph IV of the Second Cause of Action defendant denies the allegation that the plaintiff made a notation of credit to the account of



the stockholders from whom said tax of \$3,227.46 was withheld and denies that the notation of credit indicated a credit to which each of said persons was entitled by reason of deduction of said tax. Admits the remaining allegations of Paragraph IV. [19]

#### IV.

Answering Paragraph V of the Second Cause of Action defendant denies the allegation that the defendant acted unlawfully in collecting from plaintiff the amount of said tax. Defendant neither admits nor denies the remaining allegations of Paragraph V as the same are conclusions of law.

#### V.

Answering the allegations of Paragraph VI of the Second Cause of Action, defendant admits that on or about July 26, 1941, the plaintiff filed a claim for refund of said tax of \$3,227.46. Admits that in said claim for refund plaintiff alleged as the bases for said claim the same grounds and facts alleged and relied upon in the answer. Admits that a true copy of said claim (exclusive of voluminous schedules) is attached as Exhibit D to the complaint. Admits that on November 25, 1941, the Deputy Commissioner of Internal Revenue advised the plaintiff that said claim for refund was rejected. Admits that a true copy of said letter is attached as Exhibit B to the complaint. Admits that on December 15, 1941 the Commissioner of Internal Revenue notified the plaintiff that said claim for refund was rejected and that a true copy of said notice of rejection is at-

tached as Exhibit C to the complaint. Saving as herein admitted the defendant denies the allegations of Paragraph VI of the Second Cause of Action.

## VII.

Defendant admits that no part of said claim for refund has been paid to the plaintiff or otherwise, or at all.

Further answering said Second Cause of Action, defendant alleges that Section 143(f) of the Internal Revenue Code provides as follows:

“Where there has been an overpayment of tax under this section any refund or credit made under the provisions of section 322 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.” [20]

Defendant is informed and believes, and on such information and belief alleges that the tax herein involved was actually withheld by the plaintiff as withholding agent from the dividends paid to said non-resident foreign persons. Defendant alleges that refund of said taxes are payable only to those recipients of dividends upon their showing that the amounts withheld were in excess of any tax properly due for the taxable year. Defendant alleges that each of said foreign persons is the proper person to file claim for refund of any excess tax withheld from his income.

## THIRD CAUSE OF ACTION:

## I.

Defendant refers to Paragraphs I, II and III of Plaintiff's First Cause of Action and to Paragraph II of Plaintiff's Second Cause of Action and to his answer to said paragraphs of the First and Second Causes of Action, and makes said answer a part of his answer to the Third Cause of Action as if the same were fully set forth herein.

## II.

Defendant admits the allegations of Paragraph II of the Third Cause of Action.

## III.

Answering Paragraph III of the Third Cause of Action, defendant admits that the tax deducted and withheld from said Hugo Menkes, and so reported on form 1042, included \$62.44 computed upon and withheld from income credited to the account of said Hugo Menkes. Admits that said tax amounting to \$62.44, included \$41.73 of tax withheld on interest on the savings account and on interest on the Treasury bond credited to the account of Hugo Menkes, as alleged. Admits that thereafter and prior to filing claim for refund plaintiff credited back to said Hugo Menkes account the amount of tax previously withheld and paid to the Collector. Saving as herein admitted, defendant denies the allegations of Paragraph III. [21]

## IV.

Defendant admits that on April 14, 1941, the plaintiff filed claim for refund of said tax of \$41.73 and that the bases for said claim for refund were the same grounds and facts alleged in the complaint. Admits that a true copy of said claim is attached as Exhibit E to the complaint. Admits that on November 25, 1941 the Deputy Commissioner of Internal Revenue advised plaintiff by letter that its claim for refund would be rejected, copy of said letter being attached as Exhibit B to the complaint. Admits that on December 17, 1941, the Commissioner of Internal Revenue notified the plaintiff that said claim for refund was rejected, a true copy of said notice of rejection being attached to the complaint as Exhibit C. Saving as herein admitted defendant denies the allegations of Paragraph IV.

## V.

Answering the allegations of Paragraph V, defendant admits that no part of said sum of \$41.73 has been refunded to the defendant, or otherwise, or at all. Denies the remaining allegations of Paragraph V.

Further answering said Third Cause of Action, the defendant alleges that Section 143(f) of the Internal Revenue Code provides as follows:

“Where there has been an overpayment of tax under this section any refund or credit made under the provisions of section 322 shall be made to the withholding agent unless the

amount of such tax was actually withheld by the withholding agent.”

Wherefore defendant prays for judgment in his favor, for his costs and for such other relief as may be just.

FRANK J. HENNESSY,  
United States Attorney  
ESTHER B. PHILLIPS  
Assistant United States  
Attorney.

(Receipt of Service.)

[Endorsed]: Filed Oct. 3, 1942. [22]

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District Court of the United States, Northern  
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 2nd day of November, in the year of our Lord one thousand nine hundred and forty-two.

Present: the Honorable John C. Bowen, District Judge for the Western District of Washington, designated to hold and holding this Court.



[Title of Cause.]

COURT'S MINUTE ORDER NOV. 2, 1942

This case came on this day for trial before the Court sitting without a jury. George H. Koster, Esq. appeared as attorney for plaintiff, and Miss Esther B. Phillips, Assistant United States Attorney for defendant. Mr. Koster made a statement to the Court on behalf of the plaintiff, and Miss Phillips made a statement to the Court on behalf of the defendant. After further hearing the attorneys, the Court finds in favor of the plaintiff on the third cause of action. Thereupon the case proceeded to trial on the first and second causes of action. Frank E. Reed was sworn and testified on behalf of the plaintiff. Plaintiff introduced in evidence and filed Plaintiff's Exhibits No. 1 to No. 7 inclusive. Plaintiff rested. The defendant offered no evidence, and the defendant rested. The evidence was thereupon closed. After argument by the attorneys, the case was submitted to the Court for consideration and decision and the same being fully considered by the Court, the Court finds in favor of the defendant on the first and second causes of action. Ordered that judgment be entered in favor of the plaintiff on the third cause of action and in favor of the defendant on the first and second causes of action upon findings of fact and conclusions of law. Further Ordered that findings of fact and conclusions of law and judgment be prepared and served on or before November 6, 1942. Further Ordered that this case

be continued to November 6, 1942, for the settlement of the findings of fact and conclusions of law.

[23]

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on the 2nd day of November, 1942 before the Honorable Judge John C. Bowen presiding, without a jury, plaintiff appearing by its attorney George H. Koster, and defendant appearing by its attorneys, Frank J. Hennessy, United States Attorney, and Esther B. Phillips, Assistant United States Attorney. The case having been argued and submitted for decision, the Court makes the following Findings of Fact.

## FINDINGS OF FACT

### I.

This action arises under the Internal Revenue Laws of the United States. It is brought pursuant to the provisions of Section 24 of the Judicial Code, U.S.C. Title 28, Section 41(5). By the first and second causes of action plaintiff seeks to recover from the defendant, the Collector of In- [24] ternal Revenue, taxes which the plaintiff withheld from dividends on Transamerica Corporation stock payable to non-resident aliens in the years 1938 and 1939 respectively, which withheld taxes the plain-

tiff had duly reported and paid to the defendant, the Collector of Internal Revenue, pursuant to the provisions of Section 143 of the Internal Revenue Code. By the third cause of action the plaintiff seeks to recover an amount of tax erroneously withheld on certain income of a non-resident alien in the year 1939, which tax the plaintiff had paid to the defendant, the Collector of Internal Revenue, but after the date of such payment and upon discovery of its error, the plaintiff had refunded to the nonresident alien.

## II.

The plaintiff is a national banking association organized and existing under and by virtue of the laws of the United States of America. Its principal place of business is in the City and County of San Francisco, State of California, and in the Northern District of California, Southern Division.

## III.

The defendant was at all times since March 7, 1938 to the time of the institution of this proceeding, the duly appointed, qualified and acting United States Collector of Internal Revenue for the First Internal Revenue Collection District of the State of California, and is a resident of the said Northern District of California. [25]

## IV.

At all times herein mentioned plaintiff was the transfer agent of Transamerica Corporation and as such transfer agent had the control, custody, dis-



posal or payment of dividends declared by said Transamerica Corporation to the stockholders of said corporation.

#### V.

On or about March 15, 1939, the plaintiff filed a withholding tax return on Treasury Department Form 1042, reporting thereon certain income including dividends paid by Transamerica Corporation on the capital stock of said corporation, payable to alien individuals who were not residents of the United States. Plaintiff also reported on this Form the amount of tax which it was withholding from said nonresident alien individuals, and the aggregate amount of said tax was paid by the plaintiff on or about June 15, 1939 to the defendant, as Collector of Internal Revenue for the First District of California.

#### VI.

The amount of the said tax deducted and withheld from the said non-resident alien individuals, and reported on said return Form 1042, and paid to the defendant, all as alleged in the preceding paragraph hereof, included \$3,189.83 of tax computed upon and withheld from the dividends declared by Transamerica Corporation in 1938 and payable in said year 1938, to said non-resident alien individuals who were stockholders of said company. The amount of said dividends were deposited by Transamerica Corporation with the plaintiff as its agent charged with the duty of [26] making disbursement of said dividends to the stock-

holders entitled thereto, and the plaintiff assumed that the tax of \$3,189.83 which it withheld, reported, and paid to the defendant as aforesaid, was a tax required to be so deducted, withheld and paid by the provisions of said Section 143(b) and (c) of the Internal Revenue Code.

## VII.

After the payment of the withheld tax of \$3,189.83 as hereinbefore alleged, and on or about January 31, 1941, the Commissioner of Internal Revenue determined and ruled that the dividends paid by Transamerica Corporation in the year 1938 did not constitute dividend income to its stockholders.

## VIII.

On or about July 26, 1941, the plaintiff duly filed its claim for refund of said tax of \$3,189.83, and alleged therein as a basis for said claim the same grounds and facts alleged and relied upon in this proceeding. The refund claim form had attached thereto lists containing the name of approximately 1,000 non-resident alien individuals and these lists showed the name and address of each individual, the total amount of the Transamerica dividend payable to each individual, and the amount of the tax which had been withheld from each individual and for the refund of which the claim was being filed. On November 25, 1941, the Deputy Commissioner of Internal Revenue advised the plaintiff by letter that its claim for refund would be rejected for the reason:

“As the tax involved was actually withheld by you from the income paid to the non-resident foreign persons, any excess amounts withheld are refundable only to those recipients upon showing that the amounts withheld were in excess of any tax properly due for the taxable year. For this reason your claims will be rejected.” [27]

and the official rejection was made by the Commissioner of Internal Revenue on December 17, 1941.

#### IX.

No part of said sum of \$3,189.83 collected from the plaintiff by the defendant as aforesaid has been repaid or refunded.

#### X.

On or about March 15, 1940, the plaintiff filed a withholding tax return on Treasury Department Form 1042 reporting thereon certain income including dividends paid by Transamerica Corporation on the capital stock of said corporation, payable to alien individuals who were not residents of the United States. Plaintiff also reported on this Form the amount of tax which it was withholding from said non-resident alien individuals, and the aggregate amount of said tax was paid by the plaintiff on or about June 15, 1940 to the defendant as Collector of Internal Revenue for the First District of California.

#### XI.

The amount of the said tax deducted and withheld

from the said non-resident alien individuals, and reported on said return Form 1042 for the year 1939, and paid to the defendant, all as alleged in the preceding paragraph hereof, included \$3,227.46 of tax computed upon and withheld from the dividends declared by Transamerica Corporation in 1939 and payable in said year 1939, to said non-resident alien individuals who were stockholders of said company. The amount of said dividends were deposited by Transamerica Corporation with the plaintiff as its transfer agent charged with the duty of making disbursement of said dividends to [28] the stockholders entitled thereto, and the plaintiff assumed that the tax of \$3,227.46 which it withheld, reported and paid to the defendant as aforesaid, was a tax required to be so deducted, withheld, and paid by the provisions of said Section 143(b) and (c) of the Internal Revenue Code.

## XII.

On or about July 26, 1941, the plaintiff duly filed its claim for refund of said tax of \$3,227.46, alleging as a basis and grounds for said claim the same grounds and facts alleged and relied upon in this proceeding. The claim was similar in form and substance to the claim for refund filed for the 1938 tax hereinbefore described. On December 17, 1941, the Commissioner of Internal Revenue rejected this claim for the same reasons for which he rejected the 1938 claim. No part of said sum of \$3,227.46 has been repaid or refunded.

## XIII.

The plaintiff withheld taxes from non-resident aliens on dividends paid on Transamerica Corporation stock in the year 1937, and filed claim for refund of these taxes, which claim was in form and substance similar to the claims filed for the year 1938 and 1939 hereinbefore described. The Commissioner of Internal Revenue allowed this claim and made a refund of the tax to the plaintiff. Upon receipt of the refund the plaintiff paid the amounts as shown in the claim to those stockholders to whom checks could be transmitted, and plaintiff actually credited the deposit account of each stockholder to whom checks could not be transmitted, and these credits appear as deposit liabilities on the books of the plaintiff Bank. [29]

## XIV.

After the plaintiff Bank filed the said refund claims for the years 1938 and 1939, it set up on its records what it designates as "Memorandum Credit Cards," showing as to each person listed on the said refund claims a credit for the amount of the tax for which refund was being claimed for his account. This credit was set up by the plaintiff only on subsidiary card records and is considered by the plaintiff as a contingent credit which would be transferred to the actual liability accounts of the Bank when *an* if the refund claim is finally allowed by the Government, it being the purpose and intention of the plaintiff Bank to handle any refund of the 1938 and 1939 taxes in the same manner in



which it handled the refund received for the 1937 tax.

## XV.

In 1939 plaintiff was custodian for the account of a non-resident alien individual residing in Brussels, Belgium. In that year the plaintiff erroneously withheld \$41.73 tax from that individual and reported and paid those taxes to the defendant, the Collector of Internal Revenue. Thereafter plaintiff discovered its mistake and refunded the amount of said tax to the said non-resident alien individual. On April 14, 1941, plaintiff duly filed the claim for the refund of said tax, which claim was rejected by the Collector of Internal Revenue on December 17, 1941. No part of said sum of \$41.73 has been paid or refunded. [30]

From the foregoing facts found, the Court makes the following Conclusions of Law.

## CONCLUSIONS OF LAW

### I.

The right to sue the United States Government in any proceeding must be predicated upon a specific statutory provision whereby Congress has granted permission that such a suit may be brought. If there is any doubt that a claimant has brought himself within the strict terms or conditions of that permission, it must be resolved against the claimant.

### II.

The Internal Revenue Statutes do not permit the withholding agent to sue the Government for re-

fund of taxes withheld by such withholding agent from non-resident aliens, where the withholding agent has actually withheld the tax and has paid the amount of that tax to the United States Government.

### III.

With respect to the first and second causes of action in this proceeding, the plaintiff as withholding agent actually withheld the 1938 and 1939 taxes from the non-resident alien stockholders of Trans-america Corporation, and has never paid any part of those withheld amounts to those stockholders.

### IV.

The plaintiff as withholding agent, does not come within any provision of law which authorizes the filing of suits against, or the recovery of taxes from the United States Government. Since the plaintiff withheld the 1938 and 1939 tax from non-resident alien individuals and paid that tax to the United States Government, it is not a taxpayer authorized by the Internal Revenue Laws to bring this proceeding for the recovery of such taxes, or to recover such taxes from the United States Government. [31]

### V.

The defendant is entitled to judgment upon the first and second causes of action, and plaintiff is entitled to no recovery with respect thereto.

### VI.

Regarding the third cause of action, plaintiff erroneously paid a tax in the amount of \$41.73 which



was neither due nor owing, to the defendant, and plaintiff has not withheld this tax from any taxpayer; and the said tax of \$41.73 was erroneously and illegally collected from plaintiff by defendant.

## VII.

Plaintiff is entitled to judgment against the defendant, upon said third cause of action, in the sum of \$41.73, together with interest thereon as provided by law.

Accordingly, it is Ordered that as to the first and second causes of action, judgment be entered for the defendant, and plaintiff take nothing by those actions; that as to the third cause of action, judgment be entered for plaintiff in the sum of \$41.73, together with interest thereon at 6% per annum from June 15, 1940, as provided by law.

Plaintiff is entitled to costs.

Dated at San Francisco, California this day of November, 1942.

JOHN C. BOWEN,

Judge of the United States District Court.

Approved as to Form as provided in Rule 22.

GEORGE H. KOSTER,

ESTHER B. PHILLIPS,

Assistant United States Attorney.

[Endorsed]: Filed Nov. 6, 1942. [32]

In the District Court of the United States in and  
for the Northern District of California, South-  
ern Division.

No. 22219-S

BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION, a national bank-  
ing association,

Plaintiff,

vs.

CLIFFORD C. ANGLIM, United States Collector  
of Internal Revenue for the First Collection  
District of California,

Defendant.

### JUDGMENT

The cause having come on regularly for trial upon the 2nd day of November, 1942, before the Court, sitting without a jury, George H. Koster, Esq., appearing as attorney for plaintiff, and Miss Esther B. Phillips, Assistant United States Attorney, appearing as attorney for defendant, and the cause having been submitted to the Court for consideration and decision, and the Court after due deliberation having filed its findings and ordered that Judgment be entered herein in favor of the defendant as to the First and Second causes of action, and that judgment be entered herein in favor of the plaintiff as to the Third cause of action, [33]

Now, Therefore, by virtue of the law and by reason of the findings aforesaid, it is Ordered, Ad-

judged and Decreed, that plaintiff take nothing by its First Cause of Action and its Second Cause of Action, in this proceeding, and that plaintiff do have and recover upon its Third Cause of Action in this proceeding, the sum of \$41.73 together with interest thereon at the rate of 6% per annum from June 15, 1940, to a date preceding the refund thereof by not more than thirty days; and plaintiff is entitled to costs and disbursements in this action expended in the amount of \$17.30.

Dated at San Francisco, California, this 6th day of November, 1942.

JOHN C. BOWEN,

Judge of the United States  
District Court.

Approved as to Form as provided in Rule 22.

GEORGE H. KOSTER,

ESTHER B. PHILLIPS,

Ass't. U. S. Attorney.

[Endorsed]: Filed Nov. 6, 1942. [34]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Bank of America National Trust and Savings Association, a national banking association, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the

Ninth Circuit from the final judgment entered in this action on November 6, 1942.

GEORGE H. KOSTER,  
Attorney for Appellant, 300 Montgomery Street,  
San Francisco, California.

[Endorsed]: Filed Feb. 2, 1943. [35]

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[Title of District Court and Cause.]

COST BOND ON APPEAL

4625952

A Stock Company—Established 1890

FIDELITY AND DEPOSIT COMPANY

Home Office                      of Maryland                      Baltimore

Whereas, Bank of America National Trust and Savings Association, a national banking association, Plaintiff herein, has prosecuted or is about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth District from the final judgment entered in this action on November 6, 1942.

Know All Men By These Presents:

That we, Bank of America National Trust and Savings Association, a national banking association, as Principal, and Fidelity and Deposit Company of Maryland, a corporation created, organized and existing under and by virtue of the laws of the State of Maryland and duly authorized to transact business in the State of California, as Surety, are held

and firmly bound unto Clifford C. Anglim, United States Collector of Internal Revenue for the First Collection District of California, Defendant in the above entitled action, in the full and just sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, lawful money of the United States of America to be paid to the said Clifford C. Anglim, for which payment well and truly to be made we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Now, Therefore, the condition of this obligation is such that if the said Principal, Bank of America National Trust and Savings Association, a national banking association, will prosecute its appeal to effect and answer all costs if it fails to make good its appeal, not exceeding however the sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, then this obligation shall be null and void, otherwise to remain in full force and effect.

And further, it is expressly understood and agreed that in case of a breach of any condition of the above obligation, the Court in the above entitled matter may, upon notice to the Fidelity and Deposit Company of Maryland, of not less than ten (10) days, proceed summarily in the action or suit in which the same was given to ascertain the amount which said Surety is bound to pay on account of such breach, and render judgment therefor against it and award execution therefor.

The premium charged for this bond is \$10.00 Dollars per annum.

Signed, Sealed and Dated this 2nd day of February, 1943.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

By .....

[Seal]

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By GUERTIN CARROLL

Attorney-in-Fact

Attest:

E. CASLER

Attesting Agent

State of California,

City and County of San Francisco—ss.

On this 2nd day of February, A. D. 1943, before me, Margaret Keene Whitmore, a Notary Public in and for the City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared, Guertin Carroll, Attorney-in-Fact, and E. Casler, Agent, of the Fidelity and Deposit Company of Maryland, a corporation, known to me to be the persons who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same, and also known to me to be the persons whose names are subscribed to the within instrument as the Attorney-in-Fact and Agent respectively of said corporation, and they, and each of them, acknowledged to me that



they subscribed the name of said Fidelity and Deposit Company of Maryland thereto as principal and their own names as Attorney-in-Fact and Agent respectively.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year first above written.

[Seal] MARGARET KEENE WHIT-  
MORE

Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires April 21, 1945. [36]

[Endorsed]: Filed Feb. 2, 1943.

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[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED  
UPON ON APPEAL

(1) The District Court erred as a matter of law in determining that plaintiff was not authorized under the law to maintain this action for the recovery of income taxes withheld by plaintiff as withholding agent from non-resident alien individuals and paid to defendant from payments which did not constitute taxable income to the non-resident aliens.

(2) The District Court erred as a matter of law in determining that a withholding agent is not authorized to maintain an action for the recovery of



income taxes erroneously withheld from payments to non-resident aliens and paid to the Collector of Internal Revenue.

(3) The District Court erred in failing and refusing to hold that plaintiff was entitled to the refund of the taxes paid to defendant. [37]

(4) The District Court erred as a matter of law in rendering judgment against plaintiff on the first and second causes of action herein.

Dated: February 10th, 1943.

GEORGE H. KOSTER  
BAYLEY KOHLMEIER  
Attorneys for plaintiff and  
appellant

Service of above Statement of Points to be Relied upon and receipt of a copy thereof is hereby acknowledged.

FRANK J. HENNESSY  
ESTHER B. PHILLIPS  
Assistant U. S. Attorney  
Attorneys for defendant.

[Endorsed]: Filed Feb. 10, 1943. [38]

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[Title of District Court and Cause.]

### STIPULATION AS TO RECORD

Pursuant to Rule 75(f) of the Rules of Court Procedure it is hereby stipulated and agreed by and between the parties hereto that the following designated portions of the record, proceedings and evi-

dence be included in the record on appeal and the Clerk of the Court is requested to prepare the record in accordance with this stipulation:

- (1) Complaint and exhibits attached thereto.
- (2) Answer.
- (3) Minute Order Decision.
- (4) Findings of Fact and Conclusions of Law.
- (5) Judgment.
- (6) Notice of Appeal with date of filing. [39]
- (7) Bond for costs on appeal.
- (8) Statement of Points to be Relied upon on appeal.
- (9) This Stipulation as to Record.

Dated: February 10th, 1943.

GEORGE H. KOSTER

BAYLEY KOHLMEIER

Attorneys for Plaintiff

FRANK J. HENNESSY

United States Attorney

ESTHER B. PHILLIPS

Assistant U. S. Attorney

Attorneys for Defendant

[Endorsed]: Filed Feb. 10, 1943. [40]

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District Court of the United States  
Northern District of California

**CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of

California, do hereby certify that the foregoing 40 pages, numbered from 1 to 40, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Bank of America N. T. & S. A., a national banking association, vs. Clifford C. Anglim, United States Collector of Internal Revenue for the First Collection District of California, No. 22219-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Five Dollars and Sixty Cents (\$5.60) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 10th day of March, A. D. 1943.

[Seal]

WALTER B. MALING

Clerk

WM. J. CROSBY

Deputy Clerk

[Endorsed]: No. 10384. United States Circuit Court of Appeals for the Ninth Circuit. Bank of America, National Trust and Savings Association, a national banking association, Appellant, vs. Clifford C. Anglim, United States Collector of Internal Revenue for the First Collection District for California, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed March 10, 1943.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the Circuit Court of Appeals  
For the Ninth Circuit

Docket No. 10384

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION, a national  
banking association,

Appellant,

vs.

CLIFFORD C. ANGLIM, United States Collector  
of Internal Revenue for this First Collection  
District of California,

Appellee.

STATEMENT OF POINTS TO BE RELIED  
UPON ON APPEAL; DESIGNATION OF  
PORTION OF RECORD TO BE PRINTED

Comes now the appellant above named by its attorneys of record and complying with the rules of this Court states that it intends to rely on appeal on all and each of the points alleged in the statement of points to be relied upon on appeal filed with the District Court below and included in the transcript herein.

Appellant further states that it relies upon the entire record certified by the Clerk of the District

Court to this Court, and directs that said record so certified be printed as the record on appeal.

Respectfully submitted,

GEORGE H. KOSTER      BK

BAYLEY KOHLMEIER

Attorneys for Appellant

300 Montgomery Street

San Francisco, California.

[Endorsed]: Filed Mar. 17, 1943. Paul P. O'Brien,  
Clerk.